

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION**

HOUSE BUSINESS AND LABOR COMMITTEE

Date: Tuesday, February 10, 2009
Place: Capitol

Time: 10:00 am
Room: 172

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

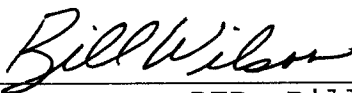
HB 400 DPAA HB 291 P _____

HB 160 DPAA HB 412 DPAA _____

HB 204 DPAA _____

HB 378 DPAA _____

COMMENTS:



REP. Bill Wilson, Chairman

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE: 2/10

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
Rep. Michele Reinhart	✓	
Rep. Bill Beck	✓	
Rep. Elsie Arntzen	✓	
Rep. Shannon Augare	✓	
Rep. Paul Beck	✓	
Rep. Tom Berry	✓	
Rep. Carlie Boland	✓	
Rep. John Fleming	✓	
Rep. Timothy Furey	✓	
Rep. Chuck Hunter	✓	
Rep. Harry Klock	✓	
Rep. Mike Milburn	✓	
Rep. Pat Noonan	✓	
Rep. Scott Reichner	✓	
Rep. Cary Smith	✓	
Rep. Gordon Vance	✓	
Rep. Jeffery Welborn	✓	
Rep. Bill Wilson	✓	



HOUSE STANDING COMMITTEE REPORT

February 10, 2009

Page 1 of 2

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 378** (first reading copy – white) **do pass as amended.**

Signed: *Bill Wilson*
Representative Bill Wilson, Chair

And, that such amendments read:

1. Title, line 4.

Following: "ACT"

Strike: "EXPANDING THE EMPLOYMENTS TO WHICH"

Insert: "EXEMPTING FROM"

2. Title, line 5.

Following: "ACT"

Strike: "DOES NOT APPLY TO INCLUDE"

Insert: "THE EMPLOYMENT OF PERSONS PERFORMING THE SERVICES OF AN
INTRASTATE OR INTERSTATE COMMON OR CONTRACT MOTOR CARRIER IF
HIRED BY A"

Following: "FREIGHT"

Strike: "FORWARDERS"

Insert: "FORWARDER"

Following: " ; "

Strike: "AND"

3. Title, line 6.

Following: "MCA"

Insert: " ; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

4. Page 3, line 29.

Following: "broker"

Insert: "or freight forwarder"

5. Page 4, line 6.

Committee Vote:

Yes 18, No 0

Fiscal Note Required ____

HB0378001SC.hjd

Strike: subsection (z) in its entirety

6. Page 5, line 15.

Insert: "NEW SECTION. Section 2. Effective date. [This act]
is effective on passage and approval."

- END -



HOUSE STANDING COMMITTEE REPORT

February 10, 2009

Page 1 of 2

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 204** (first reading copy – white) **do pass as amended.**

Signed: *Bill Wilson*
Representative Bill Wilson, Chair

And, that such amendments read:

1. Title, line 5.

Strike: "A PERSON"

Insert: "AN APPLICANT"

2. Title, line 5 through line 6.

Strike: "FOR" on line 5 through "YEARS" on line 6

3. Title, line 6.

Following: "IS"

Insert: "NOT"

4. Title, line 6 through line 7.

Strike: "ONLY" on line 6 through "YEARS" on line 7

Insert: "DOCUMENTS PREVIOUSLY SUBMITTED IF THE APPLICANT VERIFIES
THAT THE PREVIOUSLY SUBMITTED DOCUMENTS ARE STILL CURRENT
AND VALID OR THE DEPARTMENT DECIDES THE DOCUMENTS ARE STILL
CURRENT AND VALID"

5. Page 2, line 2.

Following: "To"

Strike: "Except as provided in subsection (5)(b), to"

Insert: "To"

6. Page 2, line 7.

Following: "department"

Strike: "if required"

Committee Vote:

Yes 16, No 2

Fiscal Note Required

HB0204001SC.hjd

7. Page 2, line 17 through line 19.

Strike: subsection (b) in its entirety

Insert: "(b) The department shall adopt a retention schedule that maintains copies of documents submitted in support of an initial application or renewal application for an independent contractor exemption certificate for a minimum of 3 years after an application has been received by the department. The department shall, to the extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply information that has been previously provided to the department as part of the application process.

(c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption certificate is not required to submit documents that have been previously submitted to the department if:

(i) the applicant certifies under oath that the previously submitted documents are still valid and current; and

(ii) the department, if it considers it necessary, independently verifies a specific document or decides that a document has not expired pursuant to the document's own terms and is therefore still valid and current."

- END -



HOUSE STANDING COMMITTEE REPORT

February 10, 2009

Page 1 of 2

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 400** (first reading copy – white) **do pass as amended.**

Signed: _____

Bill Wilson
Representative Bill Wilson, Chair

And, that such amendments read:

1. Page 1, line 12.

Strike: "that" through "volume"

2. Page 1, line 13.

Following: "code."

Strike: "Beer"

Insert: "Unless defined as beer in 16-1-106(5) (b), beer"

Strike: "14%"

Insert: "8.75%"

3. Page 1, line 26.

Following: "means"

Insert: ": (a) "

Strike: "14%"

Insert: "8.75%"

Following: "volume"

Insert: "; or"

(b) an alcoholic beverage containing not more than 14% alcohol by volume:

(i) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(ii) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

Committee Vote:

Yes 14, No 4

Fiscal Note Required ____

HB0400001SC.hjd

February 10, 2009

Page 2 of 2

4. Page 3, line 27 through line 28.

Strike: "containing" on line 27 through "volume" on line 28

- END -



HOUSE STANDING COMMITTEE REPORT

February 10, 2009

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 412** (first reading copy -- white) **do pass as amended.**

Signed: *Bill Wilson*
Representative Bill Wilson, Chair

And, that such amendments read:

1. Page 1, line 25.

Strike: "20,001"

Insert: "20,000"

- END -

Committee Vote:

Yes 14, No 4

Fiscal Note Required ☐

HB0412001SC.hjd



HOUSE STANDING COMMITTEE REPORT

February 10, 2009

Page 1 of 8

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 160** (first reading copy – white) **do pass as amended.**

Signed: _____

Representative Bill Wilson, Chair

And, that such amendments read:

1. Title, line 8.

Following: "PREMIUMS;"

Insert: "REVISING INVESTMENT REQUIREMENTS FOR CAPTIVE INSURERS;"

2. Title, line 9.

Following: "33-2-1903,"

Insert: "33-28-102, 33-28-105,"

Following: "33-28-107,"

Strike: "33-28-120,"

Following: "33-28-201,"

Insert: "33-28-202,"

3. Page 2, following line 18.

Insert: "**Section 2.** Section 33-28-102, MCA, is amended to read:

"**33-28-102. Licensing -- authority.** (1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a license to provide property insurance, casualty insurance, life insurance, disability income insurance, surety insurance, marine insurance, and health insurance coverage or a group health plan as defined in 33-22-140, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies and controlled unaffiliated business entities;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

Committee Vote:

Yes 18, No 0

Fiscal Note Required ____

HB0160001SC.hjd

(c) an association captive insurance company may not insure any risks other than those of the members or affiliated companies of members;

(d) a captive insurance company or a branch captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203;

(iii) provide health insurance coverage or a group health plan unless the captive insurance company or branch captive insurance company is only providing health insurance coverage or a group health plan for the parent company and its affiliated companies; or

(iv) write workers' compensation insurance on a direct basis; and

(e) a protected cell captive insurance company may not insure any risks other than those of its participant affiliated companies and controlled unaffiliated business entities.

(2) A captive insurance company may not write any insurance business unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state;

(c) it maintains its principal place of business in this state; and

(d) (i) it appoints a registered agent to accept service of process;

(ii) the name and contact information and any subsequent changes regarding the registered agent are filed with the commissioner; and

(iii) it agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) with respect to a captive insurance company formed as a corporation business entity:

(A) file with the commissioner a certified copy of its ~~charter and bylaws~~ organizational documents, a statement under oath of ~~its president and secretary~~ an officer of the business entity showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner

may reasonably require;

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) In the event of any subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as applicable; and

(v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a protected cell captive insurance company shall file with the commissioner the following:

(i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;

(ii) a statement acknowledging that all financial records of the protected cell captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;

(iii) all contracts or sample contracts between the protected cell captive insurance company and any participants; and

(iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of \$300.

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a license authorizing the company to do insurance business in this state. The license is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."

Insert: "Section 3. Section 33-28-105, MCA, is amended to read:

"33-28-105. Formation of captive insurance companies. (1) A captive insurance company must be formed or organized as a business entity as provided in this chapter.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the members of its association or associations; or

(c) organized as a reciprocal insurer under Title 33,

chapter 5; or

(d) organized as a limited liability company.

(3) A captive insurance company incorporated or organized in this state ~~may not have less than three incorporators, at least one of whom must be a resident of this state must be~~ incorporated or organized by at least one incorporator or organizer who is a resident of this state.

(4) (a) In the case of a captive insurance company formed as a business entity and before the organizational documents are transmitted to the secretary of state, the organizers shall file a copy of the proposed organizational documents and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed business entity will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of any officers, and directors, or managing members; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed organizational documents of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the organizational documents and shall return the draft to the proposed organizers, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft organizational documents, the commissioner shall forward the certificate and an approved draft of organizational documents to the proposed organizers. The organizers shall prepare two sets of the approved organizational documents and shall file one set with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) (a) At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(b) In the case of a captive insurance company formed as a limited liability company, at least one of the managers must be a resident of the state.

(c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of the state.

(7) (a) A captive insurance company formed as a corporation or another business entity has the privileges and is subject to

the provisions of general corporation law or the laws governing other business entities, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law or the laws governing other business entities and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) (i) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

(ii) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(d) A captive risk retention group has the privileges and is subject to the provisions of Title 33, chapter 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this chapter prevail.

(9) Except as provided in 33-28-306, the provisions of Title 33, chapter 3, pertaining to mergers, consolidations, conversions, mutualizations, and voluntary dissolutions apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) (a) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company shall apply to the secretary of state for a certificate of authority to transact business in this state after the

commissioner's certificate is issued.

(b) A branch captive insurance company established pursuant to the provisions of this chapter to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies is subject to provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies.

(c) A branch captive insurance company may not do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state."

Renumber: subsequent sections

4. Page 3, line 26 through page 4, line 13.

Strike: Section 3 in its entirety

Renumber: subsequent sections

5. Page 5, line 9.

Following: "(a)"

Strike: "If"

Insert: "(i) Except as provided in subsection (3)(a)(ii), if"

6. Page 5, following line 11.

Insert: "(ii) In the calendar year in which a captive insurance company that is subject to the minimum tax is first licensed, the tax must be prorated on a quarterly basis as follows:

- (A) \$5,000 if licensed in the first quarter;
- (B) \$3,750 if licensed in the second quarter;
- (C) \$2,500 if licensed in the third quarter; and
- (D) \$1,250 if licensed in the fourth quarter."

7. Page 5, following line 29.

Insert: "Section 6. Section 33-28-202, MCA, is amended to read:

"33-28-202. **Legal investments.** (1)(a) An industrial insured captive insurance company, an association captive insurance company, and a captive risk retention group shall comply with the investment requirements contained in Title 33, chapter 12, and the rules promulgated in accordance with these provisions.

(b) The commissioner may approve the use of alternative reliable methods of valuation and rating.

(c) When a captive insurance company's admitted assets total less than \$5 million, the commissioner may approve an investment of up to 20% of admitted assets in rated credit instruments in any one investment that meets the requirements of 33-12-303(1)(c).

(2) A pure captive insurance company is not subject to any restrictions on allowable investments, except that the

commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

(3) Only a pure captive insurance company may make loans to its parent company or affiliates. Loans to a parent company or any affiliate may not be made without prior written approval of the commissioner and must be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds required by 33-28-104 are prohibited.""

Renumber: subsequent sections

8. Page 6, line 3.

Following: "definitions of"

Insert: "commissioner and department provided in 33-1-202,"

- END -



HOUSE STANDING COMMITTEE REPORT

February 10, 2009

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 291** (first reading copy – white) **do pass**.

Signed: _____

Bill Wilson
Representative Bill Wilson, Chair

- END -

Committee Vote:

Yes 17, No 1

Fiscal Note Required ____

HB0291001SC.hjd

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2/10/09 BILL NO. HB 400 MOTION NO. _____
 MOTION: _____

Do Pass as Amended

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Rep. Michele Reinhart	/		
Rep. Bill Beck	/		
Rep. Elsie Arntzen		/	
Rep. Shannon Augare		/	
Rep. Paul Beck	/		
Rep. Tom Berry	/		
Rep. Carlie Boland	/		
Rep. John Fleming	/		
Rep. Timothy Furey	/		
Rep. Chuck Hunter	/		
Rep. Harry Klock	/		
Rep. Mike Milburn	/		
Rep. Pat Noonan	/		
Rep. Scott Reichner		/	
Rep. Cary Smith		/	
Rep. Gordon Vance	/		
Rep. Jeffery Welborn	/		
Rep. Bill Wilson	/		

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2/10/09 BILL NO. HB 291 MOTION NO. _____
 MOTION: _____

DO PASS

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Rep. Michele Reinhart	/		
Rep. Bill Beck	/		
Rep. Elsie Arntzen	/		
Rep. Shannon Augare	/		
Rep. Paul Beck	/		
Rep. Tom Berry	/		
Rep. Carlie Boland	/		
Rep. John Fleming	/		
Rep. Timothy Furey	/		
Rep. Chuck Hunter	/		
Rep. Harry Klock	/		
Rep. Mike Milburn		/	
Rep. Pat Noonan	/		
Rep. Scott Reichner	/		
Rep. Cary Smith	/		
Rep. Gordon Vance	/		
Rep. Jeffery Welborn	/		
Rep. Bill Wilson	/		

DEPARTMENT OF ADMINISTRATION
DIVISION OF BANKING AND FINANCIAL INSTITUTIONS



BRIAN SCHWEITZER
GOVERNOR

ANNIE M. GOODWIN
COMMISSIONER

STATE OF MONTANA

301 SOUTH PARK
SUITE 316
PO BOX 200546
HELENA MT 59620

CSBS ACCREDITED 2004
(406) 841-2920
(406) 841-2930 FAX
<http://banking.mt.gov>

February 9, 2009

Representative Shannon Augare, HD 16
Montana House of Representatives
Capitol Building
P.O. Box 200400
Helena, MT 59620

RE: House Bill 396 – Deferred Deposit and Title Loan Rate Caps

Dear Representative Augare:

Thank you for your questions during the hearing on HB 396. You expressed concern about the level of involvement the Division of Banking and Financial Institutions has in consumer education and protection. As I indicated, as a regulatory agency the Division is charged with enforcing existing law.

In addition to examinations conducted by the Division to assure compliance with Montana law, Sections 31-1-721 and 31-1-819, MCA, require deferred deposit lenders and title lenders to provide each consumer a pamphlet, prepared by or at the direction of the Division, explaining the consumer's rights and responsibilities. These pamphlets are to be provided before a loan is consummated. Attached is model language for the pamphlets, prepared by the Division. Delivery of these pamphlets is something our examiners check for at each examination. The pamphlets are available online at the Banking Division's website at <http://www.banking.mt.gov>. The Division will amend the attached consumer pamphlets so that they include information about the complaint process that is available to consumers.

While the Division currently accepts and investigates consumer complaints, you noted that the complaint process is to be established by rule. The Division was in the process of drafting additional rules for deferred deposit licensees prior to the start of the legislative session. We will complete the process during the spring, and will include a complaint process in the draft rules for deferred deposit and title loan complaints. Our Division would be most willing to include you in on an interested party list so that you may receive and participate in the rulemaking process.

A lender may not charge fees unless authorized by law.

1. A lender may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the loan.
2. If there are insufficient funds to pay a check or authorization for electronic deduction on the date of the presentment, a lender may charge a fee not to exceed \$30.00. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once. This fee is the lender's exclusive charge for late payment.

PROHIBITED ACTS OF LENDER

A lender cannot:

1. Engage in deferred deposit lending unless the Division has first issued a valid license.
2. Threaten to use or use a criminal process to collect on a loan made to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default.
3. Alter the date or **any other** information on a check or authorization for electronic deduction received from a consumer.
4. Charge or collect more fees than those allowed by Montana Law.
5. Engage in unfair, deceptive or fraudulent practices in the making or collecting of a deferred deposit loan.
6. Engage in other acts that are prohibited under Montana's Deferred Deposit Loan Act.

REMEMBER:

Always ask to review and understand the written loan agreement before signing the agreement. Seek advice of someone trustworthy and knowledgeable. Contact a consumer credit counselor, attorney, or financial advisor.

TITLE LOANS
AND
MONTANA CONSUMERS



Montana consumers should take special care when engaging in Title Loan transactions.

Montana law protects consumers who enter into short-term, high rate loans with lenders from abuses that occur in the credit market place.

To protect yourself, follow these guidelines:

1. Contact the Division of Banking and Financial Institutions of the Department of Administration at 406-841-2920 to determine if the lender is licensed by the Division.
2. Review the written agreement between the lender and you to make sure that the following information is included:
 - a. the name, address and phone number of the lender making the title loan, and the signature, initials or other written means of identifying the individual employee who signs the agreement on behalf of the lender;
 - b. an itemization of the fees and interest charges to be paid by the consumer;
 - c. a clear description of the consumer's payment obligations under the loan; and
 - d. a statement providing an opportunity to rescind the agreement through 5:00 pm the first business day after execution of the transaction.

A lender may not charge any interest, fees or charges unless authorized by law.

The maximum rate of interest that a title lender shall contract for and receive for making and carrying any title loan authorized by this part may not exceed:

1. 25% for each 30-day period for the portion of a loan that does not exceed \$2,000;
2. 18% for each 30-day period for the portion of a loan exceeding \$2,000 but not exceeding \$4,000; and
3. a 10% percentage rate for each 30-day period, plus fees, on the portion of a loan that exceeds \$4,000.

Title lenders may charge their actual costs of recording liens on borrowers' certificates of title.

PROHIBITED ACTS OF LENDER

A title lender cannot:

1. accept a pledge from a person under 18 years of age;
2. make any title loan agreement giving the title lender any recourse against the borrower other than the rights granted title lenders under the Montana Title Loan Act;
3. accept any waiver, in writing or otherwise, of any right or protection accorded a borrower pursuant to the Montana Title Loan Act;
4. fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal property in the physical possession of the title lender;
5. purchase titled personal property for personal use that was repossessed from the borrower by the title lender;
6. enter into a title loan agreement unless the borrower presents clear title to the titled personal property at the time that the loan is made;
7. hold a title for more than 30 calendar days without perfecting the lender's security interest;
8. threaten to use or use a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of title loans not available to title lenders under the Montana Title Loan Act;
9. use any device or title loan agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by the Montana Title Loan Act;
10. engage in unfair, deceptive, or fraudulent practices in the making or collection of a title loan;
11. knowingly violate any provision of or rule promulgated pursuant to the Montana Title Loan Act; or
12. include any of the following provisions in the title loan agreement:
 - (i) a hold harmless clause, provided that a title lender is not liable to the borrower or a third party for injuries to or damages sustained by the borrower or a third party as the result of an accident involving personal property to which the title lender holds the certificate of title;
 - (ii) a confession of judgment clause;
 - (iii) any assignment of or order for payment of wages or other compensation for services;
 - (iv) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or
 - (v) a waiver of any provision of the Montana Title Loan Act.

If a title lender enters into a transaction contrary to this section, any lien or security interest obtained by the title lender is void.

REMEMBER:

Always ask to review and understand the written loan agreement before signing the agreement. Seek advice of someone trustworthy and knowledgeable. Contact a consumer credit counselor, attorney, or financial advisor.

DEFERRED DEPOSIT LOANS

AND

MONTANA CONSUMERS



Montana consumers should take special care when buying or engaging in Deferred Deposit lending transactions.

Montana law protects consumers who enter into short-term, high rate loans with lenders from abuses that occur in the credit market place. Consumers should be aware of their rights and responsibilities when engaging in a deferred deposit lending transaction.

To protect yourself, follow these guidelines:

1. Contact the Division of Banking and Financial Institutions of the Department of Administration at 406-841-2920 to determine if the lender is licensed by the Division.
2. Review the written agreement between the lender and you to make sure that the following information is included:
 - a. the name, address and phone number of the lender making the deferred deposit loan and the signature, initial or other written means of identifying the individual employee who signs the agreement on behalf of the lender;
 - b. an itemization of the fees to be paid by the consumer;
 - c. a clear description of the consumer's payment obligations under the loan;
 - d. a statement providing an opportunity to rescind the agreement through 5:00 pm the first business day after execution of the transaction; and
 - e. a statement in at least 14 point bold type face immediately preceding the signature of the consumer that provides **"you cannot be prosecuted in criminal court for collection of this loan"**.

Finally, Commissioner Annie Goodwin, has been active in the Montana Financial Education Coalition and the Montana Council of Economic Education. These programs provide for financial education and literacy of Montana consumers and students.

I hope this clarifies my response to the committee and to you. If you should have any questions, please contact Annie Goodwin or me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Olson".

Chris Olson, Deputy Commissioner
Division of Banking and Financial Institutions

c: Members, House Business and Labor Committee